

THE HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.18358 OF 2014

ORDER:

This Writ Petition is filed to declare the action of the respondents in issuing the impugned order dated 20.05.2013 as illegal and arbitrary and set aside the same and to issue consequential direction to the respondents to reinstate the petitioner in service in Boarder Security Force from 01.06.2012 with all consequential benefits.

02. The petitioner is working as a Constable in Border Security Force (for short 'BSF'), having joined the service on 01.01.1995 at Siliguri, Baikanthpuri, North Bengal. Later, he was transferred to 71st Battalion at Srinagar, where the petitioner served from the year 1996 to 2002. Again the petitioner was transferred to Delhi, where he served from the year 2002 to 2006. Again he was transferred to 71st Batallion, Punjab, Gurdaspur, where he served from the year 2006 to 2008. Later, the petitioner was transferred to 108th Battalion, Malade, Kolkata, West Bengal, where he served from the year 2008 to 2012. Again, the petitioner was transferred to 108th Battalion, Shillong, Meghalaya. According to the guidelines of BSF, the petitioner is entitled to claim two months leave annually and accordingly, he applied for leave for two months from 02.04.2012 to 01.06.2012 to visit his family at his native place, i.e., Srikakulam District, Andhra Pradesh. When his leave was about to complete, he became sick on 30.05.2012. Immediately, he has consulted a local doctor by name Dr.Mohan Rao at Amudalavasala, Srikakulam District, Andhra Pradesh and the said Doctor advised the petitioner to undergo immediate treatment as his condition was serious, accordingly, the petitioner was admitted in Rajiv Gandhi Institute of Medical Sciences (RIMS), Srikakulam on 01.06.2012 as he was suffering from 'Acute Chronic Cholecystetis'. The petitioner was treated there from 01.06.2012 to 30.06.2012, but, there was no improvement in his health condition as he was suffering from 'Acute Chronic Cholecystetis with

Hepatitis'. Again the Doctor advised the petitioner to take bed rest for another two months, i.e., from 01.07.2012 to 31.08.2012. Accordingly, he took bed rest for the said period, but the infection was increased and converted into 'Acute Chronic Cholecystitis with Taundre'. Again the Doctor advised the petitioner to undergo treatment from 01.09.2012 to 10.10.2012, i.e., for 40 days, but the petitioner did not regain his health.

The petitioner further contended that on the advise of his friends and family members, he underwent Ayurvedic treatment for early cure. Due to the above reasons, he could not report to duty immediately after expiry of two months period of leave.

03. In the meanwhile, on 19.09.2012, a show-cause notice was issued to the petitioner to the address of the petitioner in the Village. The petitioner submitted the reasons for his absence in his reply. The petitioner was discharged from Hospital on 13.03.2013. At the time of discharge, the Doctor advised him to attend to review, every week and he was visiting the doctor occasionally as directed. The petitioner came to know that one Mr.I.Radha Krishna, 108, BW BSF, Shillong, enquired about overstay of the petitioner after expiry of leave and submitted his report. Despite it, the second respondent initiated action and removed him from service. Therefore, the action of the second respondent is illegal and arbitrary, and accordingly prayed to set aside the same by exercising power of judicial review.

04. The respondents filed a detailed counter admitting the availment of leave by the petitioner and his overstay and passing of the impugned order. The respondents also admitted the issuance of show-cause notice dated 19.09.2012 and the same was returned with the endorsement 'adversely absent, hence returned to sender' and thus the petitioner is deliberately avoiding to receive the show-cause notice. Again another show-cause notice was issued along with the Court of Inquiry proceedings dated 14.10.2012. The said notice was received by the petitioner on 25.10.2012 and the receipt of the same was

acknowledged. The respondents proposed to remove the petitioner from service and sought for sanction on 02.03.2013 and accorded by the Ftr HQ Shillong, on 18.03.2013.

05. The petitioner sent two telegrams informing about his willingness to join duty on 31.12.2013 along with the medical fitness certificate, but did not report to duty on the said day and further overstayed. On getting the move sanction, the respondents authority issued letter directing one CT I.Radha Krishna of 108 Battalion, BSF on 20.03.2013 to visit the home of the petitioner along with police of the nearest police station for knowing the actual reason for overstay after the expiry of leave period. As directed, the said I.Radha Krishna, along with one G.Nageswara Rao (2nd Ward Municipal Counselor) and a police constable Mahesh of Amadalavalasa Police Station, visited the home town of the petitioner on 29.03.2013 and met the Village headman who informed that the petitioner is ill and taking treatment. They also met the Doctor, who was treating the petitioner. The said I.Radha Krishna submitted report in local language. The medical documents brought by the representative were verified by the Doctor of the unit who opined that as it is a case of 'Acute Cholecystitis', such a prolonged stay away from duty does not justify and that the petitioner may take his treatment from NEIGRIHMS and if required, he may be referred to higher centre. Accordingly, the petitioner was given last opportunity on 26.04.2013 by letter directing him to join duty within 5 days on receipt of the said letter along with the medial document, failing which, the Department will be compelled to dismiss him from service. However, the petitioner willfully did not rejoin his duty. Therefore, having no other alternative, by following Rule 22 of the BSF Rules, 1969, the respondents passed the impugned order duly following the legal formalities. Therefore, overstay of the petitioner for such a long period compelled the respondents to pass such an order. The respondents relied on the decision of the Apex Court in **STATE OF RAJASTHAN VS. MOHD AYUB NAZ**^[1]. On the strength

of the said judgment, the order of the respondents cannot be challenged and at best, the petitioner is entitled to file an appeal under Rule 28-A of the BSF Rules, 1969. Therefore, there are no merits in the writ petition and prayed to dismiss the same.

06. The learned counsel for the petitioner, during the course of hearing of the writ petition at the stage of admission, contended that overstay after expiry of leave does not warrant termination and such a penalty is harsh. To support his contention, he placed reliance on the judgment of this Court in **CH.PRABHAKAR RAO VS. DEPUTY INSPECTOR GENERAL OF POLICE, NEW DELHI RANGE CRPF, R.K.PURAM, NEW DELHI AND OTHERS**^[2] and also relied on the judgment of the Apex Court in **KRUSHNAKANT B PARMAR VS. UNION OF INDIA AND ANOTHER**^[3].

07. Whereas the learned Assistant Solicitor General representing the respondents did not advance any arguments.

08. Undisputedly, the petitioner overstayed after expiry of the leave period and the reason assigned by him is that he was suffering from very serious illness, i.e., 'Acute Chronic Cholecystitis with Taundre' and filed the medical record including the out-patient and in-Patient record, i.e., from page 24 to 35 of the affidavit, which discloses that the petitioner was admitted into hospital on 12.10.2012 and was discharged on 07.11.2012, i.e., for a period of 25 days and that he later underwent treatment as out-patient, produced the documentary proof in support of it. Later the petitioner obtained the Sick Certificate from RIMS General Hospital informing that the petitioner is not in fit condition to discharge his duties and he was under his treatment during such period. The only reason for his overstay is ill-health, which did not permit him to report to duty.

09. The contention of the respondents is that despite notice including telegrams and show cause notice, the petitioner did not report to duty.

10. The petitioner being an employee in BSF is governed by the BSF Act and Rules. Rule 20 of the BSF Rules deals with termination

from service of officers by the Central Government on account of misconduct. Rule 22 deals with Dismissal or removal of persons other than officers on account of misconduct. Therefore, Rule 22 is appropriately applicable to the petitioner's case as he was not an Officer working in the BSF. It is relevant to extract Rule 22 of BSF Rules for better appreciation and it is extracted hereunder-

"22. Dismissal or removal of persons other than officers on account of mis-conduct.

(1) When it is proposed to terminate the service of a person subject to the Act other than an officer, he shall be given an opportunity by the authority competent to dismiss or remove him, to show cause in the manner specified in sub-rule (2) against such action:

Provided that this sub-rule shall not apply -

(a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or

(b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity or showing cause.

(2) When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence:

Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion its disclosure is not in the public interest.

(3) The competent authority after considering his explanation and defence if any may dismiss or remove him from service with or without pension:

Provided that a Deputy Inspector General shall not dismiss or remove from service, a Subordinate Officer of and above the rank of a Subedar.

(4) All cases of dismissal or removal under this rule, shall be reported to the Director General."

11. In view of mandatory procedure prescribed under Rule 22, a show cause notice in the manner as provided in sub-rule (2) is required

to be issued, afford an opportunity to the person employed in BSF by the authority competent to dismiss or remove from service. Here, the show cause notice was issued, but it was not replied by the petitioner as he was undergoing treatment by the time as inpatient in RIMS, Srikakulam District, which is at a distance of 15 kilometers to his native village.

12. Section 48 of BSF Act, 1968 deals with the punishment awardable by Security Force Courts and according to it, Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by Security Force Courts according to the scale following, that is to say:-

- (a) death;
- (b) imprisonment which may be for the term of life or any other lesser term but excluding imprisonment for a term not exceeding three months in Force custody,
- (c) dismissal from the service;
- (d) imprisonment for a term not exceeding three months in Force custody;
- (e) reduction to the ranks or to a lower rank or grade or place in this list of their rank in the case of an under-officer;
- (f) forfeiture of seniority of rank and forfeiture of all or any part of the service for the purpose of promotion;
- (g) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (h) fine, in respect of civil offences;
- (i) severe reprimand or reprimand except in the case of persons below the rank of an under officer;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active duty;
- (k) forfeiture in the case of person sentenced to dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such dismissal;
- (l) Stoppage of pay and allowance until any proved loss or damage occasioned by the offence for which he is convicted is made good.

13. Here, the petitioner did commit no offence, the punishment under BSF Act, 1968 except absenting himself on account of his severe ill health i.e. Acute Chronic Cholecystitis. Therefore, Section 48 of the Act has no application. Section 40 of the BSF Act, 1968 deals with violation of good order and discipline and according to it, any person

subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and discipline of the Force shall, on conviction by a Security Force Court, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

14. In the present facts of the case, the petitioner was guilty of violation of good order and discipline, if he is unable to prove it for any reason or failed to establish that he was prevented by sufficient cause or his overstay was without any sufficient cause. Therefore, it is for the petitioner to prove that his overstay was due to sufficient cause. In the present case, undisputedly, the petitioner had suffered from severe ill health and that he underwent treatment as inpatient for prolonged period in different spells. The report of Sri I. Radha Krishna BSF Personnel submitted to the respondents also would establish that he was suffering from severe ill health and undergoing treatment in the hospital as inpatient, but issued telegram dated 08.06.2012, 06.06.2012, 12.06.2012 and notice by registered post dated 05.09.2012, show cause notice dated 19.09.2012, 14.10.2012 by post, received by the petitioner on 25.10.2012. The receipt of show cause notice dated 19.09.2012 is only a notice for proposed dismissal from service calling upon him to give explanation within 30 days, but receipt of the show cause notice dated 14.10.2012 is not useful. But in the earlier show cause notice dated 19.09.2012, the respondents called upon the petitioner to urge any defence against the proposed dismissal from the service within 30 days and failing which, the respondents will assume that the petitioner having nothing to urge any defence against the proposed action while annexing the inquiry report to the show cause notice.

15. In any view of the matter, show cause notices referred above are only after finding the petitioner guilty for the offence punishable under Section 11(2) of BSF Act read with Rule 117 of the BSF Rules and in conformity with Sub-Rule 22 of BSF Rules. Thus, by the date of show cause notice dated 19.09.2012, action was already initiated and found

the petitioner guilty for misconduct and overstay, and nothing thereby proposed punishment of dismissal from service while calling upon to explain as to why proposed action should not be taken.

16. No notice before finding him guilty was served on the petitioner personally or by post to the address of the petitioner at his native place and no such copy is filed along with the counter. But a notice dated 06/07.06.2012 was sent by registered post informing that the petitioner was granted six days EL with effect from 31.05.2012 while demanding to resume duty on 01.06.2012 etc.

17. In any view of the matter, it is clear that the petitioner, on receipt of dismissal order, submitted his explanation in Telugu, explaining the reason for his overstay. He did not give any explanation for the said notice. However, the report of Sri I. Radha Krishna submitted to the Commandant 108 Battalion Shillong, Meghalaya State, is clear that the petitioner was suffering from ill health for the last nine months and staying away to his address in the Village and he also visited RIMS, and the Doctor in turn informed the said I. Radha Krishna that the petitioner was undergoing treatment for the last nine months and he is required to continue the treatment. Thus, from the material on record including report of the said I. Radha Krishna, whom the respondents deputed, would clinchingly established that the petitioner was undergoing treatment for serious ill health as inpatient and out patient at RIMS, Srikakulam District. Despite the report, the respondents passed the Order of dismissal based on the opinion of the Doctor of BSF that the petitioner would have undergone treatment in BSF Hospital for such disease, terminated the petitioner from service based on the BSF Rules.

18. The order of respondents recorded that the petitioner committed an offence punishable under Section 11(2) of the BSF Act, 1968 read with Rule 117 in conformity with Rule 22 of BSF Rules. Section 11(2) of the BSF Act permits an officer not below the rank of Deputy Inspector General or any prescribed officer may dismiss or remove from the service any person under his command other than an officer or a subordinate

officer of such rank or ranks as may be prescribed.

19. Thus Sub-Section (2) of Section 11 of the BSF Act conferred power or authorized the Deputy Inspector General to take action. Any order of dismissal on the ground of absence without leave, inquire into absence without leave as contemplated under Sections 19 and 62 of the BSF Act and Rules 20 and 22 of BSF Rules is illegal, void and ultravires to the powers of authority. Section 11 of the BSF Act is an independent provision not depending upon the award of the punishment by the security force.

20. Section 62 of the BSF Act deals with inquiry into absence without leave, according to it,

“(1) when any person subject to this Act has been absent from duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be appointed by such authority and in such manner as may be prescribed, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care or in any arms, ammunition, equipment, instruments, clothing or necessities, and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof and the said deficiency, if any, and the Commandant of the unit to which the person belongs shall make a record thereof in the prescribed manner.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall for the purposes of this Act, be deemed to be a deserter.”

21. Thus, a specific procedure is prescribed under Section 62 of the BSF Act, to inquire into unauthorized absence of a person of an Army and BSF.

22. Rule 22 of the BSF Rules prescribed the procedure to be followed for dismissal or removal of a person other than officers on

account of misconduct by issuing show cause notice in the manner specified in sub-rule (2) intimating the proposed action of termination from the services of a person by the authority competent, affording an opportunity to him to reply, but no opportunity was afforded to him. Provided that, this sub-rule shall not apply - (a) where the service is terminated on the ground of conduct which has led to his conviction by a criminal court or a Security Force Court; or (b) where the competent authority is satisfied that, for reasons to be recorded in writing, it is not expedient or reasonably practicable to give the person concerned an opportunity or showing cause. Sub-rule (2) of Rule 22 of the BSF Rules further says that When after considering the reports on the misconduct of the person concerned, the competent authority is satisfied that the trial of such a person is inexpedient or impracticable, but, is of the opinion that his further retention in the service is undesirable, it shall so inform him together with all reports adverse to him and he shall be called upon to submit, in writing, his explanation and defence: Provided that the competent authority may withhold from disclosure any such report or portion thereof, if, in his opinion its disclosure is not in the public interest.

23. Thus the show cause notice is mandatory to remove the personnel of BSF and in strict adherence to the said Rule, the respondents issued show cause notice dated 14.10.2012 and receipt of the same was acknowledged on 25.10.2012 by the petitioner, but no reply was given. The reason for failure to give reply was only ill health.

24. Chapter VIII of Fundamental Rules deals with Dismissal, Removal and Suspension of the personnel of BSF or Military. It is clear from the order under challenge that the petitioner was removed from service only for the reason that he had overstayed after the expiry of the leave granted for a period of nine months without any sufficient cause. What is sufficient cause depends upon various attending circumstances. When the petitioner was suffering from such serious ill health, he cannot move from Srikakulam District to Shillong, Meghalaya State, which is far of place to the native District, where he suffered and when the petitioner

was undergoing treatment as inpatient in RIMS, Srikakulam District, he has not supposed to undergo such journey for days together. In the entire order under challenge, the respondents did not record that his overstay was without sufficient cause.

25. The petitioner, while suffering from such Acute Chronic Cholecystitis disease, cannot discharge his duties as BSF personnel effectively and the opinion of the Doctor of BSF that he can undergo treatment in the hospital of BSF is not sufficient. The voluminous documentary evidence produced before the respondents and filed along with the writ petition would clinchingly establish that he was suffering from severe ill health and underwent treatment both as inpatient and outpatient, and submitted those material to the respondents. Thus, in those circumstances, at best, the reason for his absence and overstay is, ill health. At best, the duty of the inquiry officer is to doubt whether the cause shown by the petitioner is sufficient cause or not and expected to record a finding. But here the inquiry authority did not consider even the report submitted by Sri. I.Radha Krishna, the Security Personnel, obviously for the reasons best known to the inquiry officer.

26. The word 'sufficient cause' means a cause beyond the control of the petitioner and to decide whether a cause shown by the petitioner is sufficient cause or not, the authorities have to take into consideration the attending circumstances but, in the present case, the respondent did not examine the attending circumstances including the report of Sri I. Radha Krishna, BSF personnel, who inquired into the allegation of overstay and submitted his report without recording any reason for disbelieving report of I. Radha Krishna.

27. In the absence of recording any finding that the petitioner was not prevented by sufficient cause from attending duty or overstay by the petitioner after expiry of the leave period. According to the rules, if any person of BSF overstayed after expiry of leave without any sufficient cause is liable for penalty. The word 'sufficient cause' assumes importance and the enquiry officer if found that the overstay of the

petitioner or after expiry of leave period is without sufficient cause, recording a specific finding thereon penalty of removal from service, prescribed under the rules, can be imposed but the report is bereft of any such finding.

28. On the other hand the petitioner produced voluminous documentary evidence before the authority concerned while explaining reasons for his inability in submitting reply to the show cause notice. Consequently, the report of the inquiry authority without recording that the petitioner was not prevented by sufficient cause for overstay is liable to be set aside.

29. The main grievance of the learned Assistant Solicitor General is that on account of overstay of the petitioner after expiry of leave period, the respondents suffered serious consequences and it amounts to grave misconduct. No doubt such conduct amounts to misconduct, if the petitioner was not prevented by cause which is beyond his reasonable control. In fact, the material on record clearly establish, including report of Sri I. Radha Krishna, that he was prevented by sufficient cause. Therefore, the respondents would have recorded reasons to believe the report of Sri I. Radha Krishna, BSF personnel, and that the petitioner was not prevented by sufficient cause, to impose penalty of removal.

30. The general principle is that courts cannot interfere with the penalty imposed by the departmental authorities except to the extent of the procedure followed.

31. Therefore, I would like to decide the legality of the punishment with reference to settled principles of law. Before going into the legality of the punishment, I would like to advert to scope of interference under Article 226 of the Constitution of India in such an administrative matter. Normally, the courts would not interfere while exercising the power of judicial review in the penalty proceedings imposed by the departmental or administrative authorities, unless it is perverse.

32. In **NAGENDRANATH BORA AND ANOTHER VS. THE COMMISSIONER OF HILLS DIVISION AND APPEALS, ASSAM AND**

OTHERS^[4], the Apex Court held that the nature of the error which can be said to be an error apparent on the face of the record which would be one of the grounds to attract the supervisory jurisdiction of the High Court under Article 226 of the Constitution. The ancient writ of *certiorari* which now in England is known as the order of *certiorari*, could be issued on very limited grounds. These grounds have been discussed by this Court in the cases of *Parry and Company Vs. Commercial Employee's Association, Madras* {(1952) ILLJ 769 SC}, *Veerappa Pillai Vs. Raman and Raman Limited and others* {[1952] 1 SCR 583}, *Ibrahim Aboobakar Vs. Custodian General of Evacuee Property* {[1952] 1 SCR 696} and *T.C. Basappa Vs. T. Nagappa* { [1955] 1 SCR 250} .

33. All these cases have been considered by the Apex Court in the case of **HARI VISHNU KAMATH VS. SYED AHMAD ISHAQUE AND OTHERS**^[5] and concluded that the Court while issuing writ of *Certiorari* acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous.

34. While considering the fourth proposition, whether the writ can be issued in the case of a decision which was erroneous in law, after considering the recent Authorities, the Apex Court held that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to see that the Tribunal functions within the limits of its authority.

35. In view of the principles laid down in the above decisions, the law declared by the Apex Court in the decisions referred supra, the scope of judicial interference in the penalty imposed in departmental enquiry is

limited and if the Court finds that the findings are perverse or the punishment is shockingly disproportionate to the gravity of the misconduct, the Court can interfere with such proceedings.

36. In a recent Division Bench decision of this Court in **TELANGANA STATE ROAD TRANSPORT CORPORATION AND OTHERS V/S JANAKI RAMUDU**^[6], an identical question came up before the Division Bench of this Court, but the period of absence was only 5 days therein. This Court, while adverting to Regulation 9 of TSRTC relied on the decision of the Apex Court, in **OM KUMAR AND OTHERS VS. UNION OF INDIA**^[7], held as follows:

“24. We agree that the question of the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Article 226 of the Constitution or of the Administrative Tribunals is limited and is confined to the applicability of one or other of the well-known principles known as Wednesbury principles, (See Associated Provincial Picture Houses Vs. Wednesbury Corporation [(1948) 1 KB 223]). This Court had occasion to lay down the narrow scope of the jurisdiction in several cases. The applicability of the principle of proportionality in administrative law was considered exhaustively in Union of India Vs. Ganayutham [1997] 7 SCC 463] where the primary role of the administrator and the secondary role of the Courts in matters not involving fundamental freedoms, was explained.

28. By proportionality, we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality.”

37. Thus, from the principle laid down by the Apex Court in **OM**

KUMAR referred to supra, followed by the Division Bench decision of this Court, limited interference of this Court is permissible when the administrative authority did not exercise its discretion to the disproportionate penalty imposed. This Court further observed in Paragraph 17 therein that for the sheer failure on the part of the Depot Manager, Kalwakurthy, in not applying as to whether the punishment of removal from service would meet the facts and circumstances brought on record, the punishment imposed on both the writ petitioners is bound to be set at naught.

38. Thus, from the principle laid down by this Court in **JANAKI RAMUDU** referred to supra, when the punishment imposed by the administrative authorities is shockingly disproportionate, judicial interference is permissible. In similar circumstances, the Division Bench of this Court in **CHAND PASHA VS. A.P.S.R.T.C.**^[8], when a conductor was removed from service for his absence from duty for 11 days, despite submission of explanation having found not satisfactory imposed penalty of removal from service under Regulation 9, observed as follows in Para 11:

“11. Now comes the question as to whether the appellant must be reinstated into service without any conditions. The charge of unauthorized absence was framed against him. It is not difficult to imagine the inconvenience to the Corporation as well as the travelling public, on account of unauthorized absence of conductors. Many a time the services have to be cancelled or recalled. That would not only result in loss of revenue to the Corporation but also a serious hardship to the travelling public. We are of the view that ends of justice would be met, if the appellant is directed to be reinstated by denying him the benefit of back wages as well as any continuity of service for the period between the date of removal and the date of reinstatement, except for the limited purpose of determining the retirement benefits.”

39. Though no law is declared by this Court hereinabove, the facts of the case are almost identical to the present facts of the case as to the

inconvenience caused to BSF.

40. A similar question came up before this Court in

CH.PRABHAKAR RAO wherein this court held that

"23. In the present case, the circumstances for overstaying the leave submitted by the petitioner before the authorities are that during the relevant period some unforeseen calamities occurred in his family, such as, his son who was aged 4 years broke his leg in an accident, he and his mother fell sick and the situation made him to spent nearly six months in the hospitals. He also stated that due to the calamities occurred in his family, he became somewhat imbalanced and sent a representation dated 08.09.1997 to the Commandant -3rd respondent stating that he may be discharged from service. It does not appear that while passing orders, the Disciplinary Authority did take into consideration any of the circumstances pleaded by the petitioner. Basing on the evidence of the witnesses in the course of the enquiry, the Enquiry Officer held that overstaying of leave by the petitioner was beyond his control and also that he never overstayed the leave, he was sincere to his duty and his work and conduct are exemplary. If the Disciplinary Authority if wants to take a different stand is under obligation to assign convincing reasons, but, the Disciplinary Authority without assigning any convincing reasons, simply passed the order of dismissal in a casual manner. The respondents are not able to show that the medical record produced by the petitioner was considered before passing the order by the Enquiry Officer or the Disciplinary Authority. The order passed by the Disciplinary Authority is not in accordance with the evidence which was forthcoming before the Enquiry Officer in the course of the enquiry. This Court, therefore, considers that the enquiry was not conducted in accordance with the procedure prescribed by law and as a result of non-observation of principles of natural justice, the order of dismissal passed by the Disciplinary Authority which is confirmed by the Appellate Authority is liable to be set aside in this writ petition.

24. Then the question comes up for consideration is as to whether the petitioner is entitled for the remuneration which he would have earned had he been permitted to work. The Supreme Court in *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and others*, AIR 1962 SC 1334, held that when the order of suspension or dismissal is set aside by a Court of law, the effect would be that the employee never been lawfully suspended or dismissed and that he was wrongfully prevented from attending to his duties as a public servant, in such a contingency, it would not be open to the authority to deprive the

public servant the remuneration which he would have earned had he been permitted to work. The Supreme Court held that when the dismissal order is set aside by a Court of law the employee is entitled for the remuneration which he would have earned had he been permitted to work."

41. The facts in the above judgment are almost identical to the present facts of the case and in the present case also, the inquiry officer or disciplinary authority did not record any reason to disbelieve the report of Sri I.Radha Krishna, BSF Personnel, and did not issue any notice to enable the petitioner to submit his reply to the show cause notice, issuing of notice to the petitioner while he was undergoing treatment in the hospital and unable to give reply to the show cause notice would not serve any purpose. Therefore, failure to give reply to the show cause notice by the petitioner is not a matter serious concern.

42. A similar question came up before this Court in a matter relating to conduct rules and regulations of APSRTC, the regulation is almost identical to the rules governing BSF that is with regard to absence or overstay without sufficient cause. In **JANAKI RAMUDU** referred to above this Court held that when the punishment imposed by the administrative authority was shockingly disproportionate, the judicial interference is permissible.

43. The main endeavour of the learned counsel for the petitioner is that the action of the respondents is irrational and the penalty of removal imposed against the petitioner is shockingly disproportionate, since the petitioner explained the reason for his overstay after expiry of the leave granted to him and he was suffering from severe ill health, underwent treatment in RIMS Srikakulam District as inpatient and out patient for prolonged period, which prevented him to report duty after expiration of leave period. Thus, the petitioner made out sufficient cause which prevented him to report duty after expiry of leave period. The respondents would have taken into consideration, the report of Sri I.Radha Krishna, BSF personnel, while imposing penalty of removal, but disregarded the report; based on the opinion of the Doctor, imposed such

grave penalty of dismissal. Therefore, the penalty of removal imposed by the respondents against the petitioner is irrational and unreasonable and in such case, the Court can interfere by applying the principle of *Wednesbury* test.

44. In **INDIAN RAILWAY CONSTRUCTION COMPANY LIMITED VS. AJAY KUMAR**^[9], the Apex Court discussed about the scope of *Wednesbury* principle and held as follows in Para 8:

"8. The famous case commonly known as "The *Wednesbury's* case" is treated as the landmark so far as laying down various basic principles relating to judicial review of administrative or statutory direction.

Before summarizing the substance of the principles laid down therein we shall refer to the passage from the judgment of Lord Greene in *Associated Provincial Picture Houses Vs. Wednesbury Corporation* ([1948] 1 KB 223) at page 229, which reads as follows:

".....It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, there may be something so absurd that no sensible person could even dream that it lay within the powers the authority..... In another, it is taking into consideration extraneous matters. It is unreasonable that it might almost be described as being done in bad faith; and in fact, all these things run into one another."

45. The principles of judicial review of administrative action were

further summarized in 1985 by Lord Diplock in CCSU case as illegality, procedural impropriety and irrationality. He said more grounds could in future become available, including the doctrine of proportionality which was a principle followed by certain other members of the European Economic Community; Lord Diplock observed in that case as follows:

".....Judicial review has I think, developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality' which is recognized in the administrative law of several of our fellow members of the European Economic Community."

Lord Diplock explained "irrationality" as follows:

By 'irrationality' I mean what can by now be succinctly referred to as *Wednesbury* unreasonableness." It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

In other words, to characterize a decision of the administrator as "irrational" the Court has to hold, on material, that it is a decision "so outrageous" as to be in total defiance of logic or moral standards. Adoption of "proportionality" into administrative law was left for the future.

These principles have been noted in aforesaid terms in *Union of India and Another Vs. G. Ganayutham*, ([1997] 7 SCC 463). In essence, the test is to see whether there is any infirmity in the decision making process and not in the decision itself.

Neither learned Single Judge nor the Division Bench has examined the question as to practicability or otherwise of holding the enquiry in the correct perspective. They have proceeded on the footing as if the order was *mala fide*; even when there was no specific allegation of *mala fides* and without any specific person against whom *mala fides* were alleged being impleaded in the proceedings. Except making a bald statement regarding alleged victimization and *mala fides* no specific details were given."

46. Thus, from the principles laid down by the Apex Court, in the decisions referred supra, the test to determine the administrative order is reasonableness. The Apex Court in **CHAIRMAN-CUM-MANAGING DIRECTOR, COAL INDIA LIMITED AND ANOTHER VS. MUKUL KUMAR CHOUDHURI AND OTHERS**^[10], while extracting the principles laid down in **UNION OF INDIA VS. G. GANAYUTHAM**^[11], and other decisions, after reviewing other decisions, laid down the principles to be followed while exercising power of judicial review in administrative order and they are as follows:

“(1) To judge the validity of any administrative order or statutory discretion, normally the *Wednesbury* test is to be applied to find out if the decision was illegal or suffered from procedural improprieties or was one which no sensible decision-maker could, on the material before him and within the framework of the law, have arrived at. The court would consider whether relevant matters had not been taken into account or whether irrelevant matters had been taken into account or whether the action was not bona fide. The court would also consider whether the decision was absurd or perverse. The court would not however go into the correctness of the choice made by the administrator amongst the various alternatives open to him. Nor could the court substitute its decision to that of the administrator. This is the *Wednesbury* test.

(2) The court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational -- in the sense that it was in outrageous defiance of logic or moral standards. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the *CCSU* principles.

(3)(a) As per *Bugdaycay* 1987 AC 514, Brind and Smith as long as the Convention is not incorporated into English law, the English courts merely exercise a secondary judgment to find out if the decision-maker could have, on the material before him, arrived at the *primary judgment* in the manner he has done.

(3)(b) If the Convention is incorporated in England making available the principle of proportionality, then the English courts will render *primary judgment* on the validity of the administrative action and find out if the restriction is disproportionate or excessive or is not based upon a fair balancing of the fundamental freedom and the need for the restriction thereupon.

(4)(a) The position in our country, in administrative law, where no

fundamental freedoms as aforesaid are involved, is that the courts/tribunals will only play a secondary role while the primary judgment as to reasonableness will remain with the executive or administrative authority. The secondary judgment of the court is to be based on *Wednesbury* and *CCSU* principles as stated by Lord Greene and Lord Diplock respectively to find if the executive or administrative authority has reasonably arrived at his decision as the primary authority.

(4)(b) Whether in the case of administrative or executive action affecting fundamental freedoms, the courts in our country will apply the principle of "proportionality" and assume a primary role, is *left open*, to be decided in an appropriate case where such action is alleged to offend fundamental freedoms. It will be then necessary to decide whether the courts will have a primary role only if the freedoms under Articles [19](#), [21](#) etc., are involved and not for Article [14](#)."

47. In view of the principles laid down by the Apex Court in **GANAYUTHAM** referred to above, the Court has to decide whether the order passed by the administrator is irrational and when there is no finding that the decision is one which no sensible person who weighed the pros and cons could have arrived at nor is there a finding, based on material, that the punishment is in "outrageous" defiance of logic. Neither *Wednesbury* nor *CCSU* tests are satisfied.

48. In **INDIAN OIL CORPORATION LIMITED VS. ASHOK KUMAR ARORA**^{[\[12\]](#)}, the Apex Court reiterated the same principle and held as follows:

"..... that the Court would not intervene unless the punishment is wholly disproportionate.

In such a situation, unless the Court/Tribunal opines in its secondary role, that the administrator was, on the material before him irrational according to *Wednesbury* or *CCSU* norms, the punishment cannot be quashed. Even then, the matter has to be remitted back to the appropriate authority for reconsideration. It is only in very rare cases as pointed out in *B.C. Chaturvedi* case that the Court might to shorten litigation think of substituting its own view as to the quantum of punishment in the place of the punishment awarded by the competent authority.

49. In **COIMBATORE DISTRICT CENTRAL CO-OPERATIVE**

**BANK VS. COIMBATORE DISTRICT CENTRAL CO-OPERATIVE
BANK EMPLOYEES ASSOCIATION AND ANOTHER^[13]**

, the Apex Court held that there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law, the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the “**doctrine of proportionality**”. Thus, the “**proportionality**” is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance of the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise-the elaboration of a rule of permissible priorities.

50. In Halsbury's Laws of England, Reissue, Volume 1(1), pages 144 and 145, Para 78, it was stated as follows:

“The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness.”

51. In **MUKUL KUMAR CHOUDHURI**, the Apex Court further held as follows in Para 21:

“21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

52. Thus, from the principles laid down in the decisions referred supra, it is clear that the administrative authorities have to act in all fairness and impose penalty proportionate to the gravity of misconduct without abusing any discretion conferred on them.

53. The Apex Court finally concluded at paragraph 21 as follows:

“26. The doctrine of proportionality is, thus, well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of punishment would be : would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company's Rules and Regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations. Ordinarily,

we would have sent the matter back to the appropriate authority for reconsideration on the question of punishment but in the facts and circumstances of the present case, this exercise may not be proper. In our view, the demand of justice would be met if the Respondent No. 1 is denied back wages for the entire period by way of punishment for the proved misconduct of unauthorized absence for six months.”

54. In view of the law declared by the Apex Court in the decisions referred supra, it is clear that the administrative authorities have to act in all fairness against their employees and impose appropriate or suitable penalty, in the event the employees are found guilty of misconduct in discharging their duties but it must commensurate with the gravity or seriousness of the misconduct, if the administrative orders are motivated or against the law, this Court can interfere while exercising power of judicial review under Article 226 of the Constitution of India.

55. Learned counsel for the petitioner while contending that the administrative orders can be interfered while exercising power of judicial review under Article 226 of the Constitution and placed reliance on the judgment of the Apex Court reported in **SHRILEKHA VIDYARTHI V. STATE OF UTTAR PRADESH**^[14] wherein the Apex court discussed about the scope of judicial review and held that:

"(A) Every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of [Article 14](#) of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in mind. Arbitrariness is anathema to State action in every sphere and wherever the vice percolates, the Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India.

Conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is

public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law.

The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every state action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always.

Therefore, irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

(B) The scope of judicial review is limited to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. The power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of irrationality is obvious."

56. In view of the law declared by the Apex Court in the judgment in **SRI LEKHA VIDYARDHI** and other Judgments referred above, it is clear that administrative authorities have to act in all fairness against employees, impose appropriate or suitable penalty, in the event employees are found guilty of discharging their duties but it must

commensurate with the gravity or seriousness of the misconduct, if the administrative orders are motivated or against the law this Court can interfere while exercising power of judicial review under Article 226 of the Constitution of India.

57. In the facts of the present case, the petitioner went to his native place after obtaining two months leave as per guidelines of BSF, he is supposed to report to duty immediately after expiry of leave period, but he suffered from severe ill health i.e. Acute Chronic Cholecystitis with Taundre, he underwent treatment in RIMS, thereby he could not report to duty and such cause is beyond, the control of the petitioner, thereby cause shown by the petitioner can be said to be reasonable or sufficient cause. A similar case came up before the Apex Court reported in **UNION OF INDIA AND OTHERS VS. GIRIRAJ SHARMA** ^[15] wherein the Apex Court in second paragraph of the judgment held that when the employee had explained the circumstances in which it was inevitable for him to continue on leave as he was forced to do so on account of unexpected circumstances, over stayed after expiry of leave period does not warrant said harsh punishment since it was not his intention to willfully flout the order, therefore set aside the penalty of dismissal. The Apex Court, while dealing with the case of overstay, passed the said Order. But in the present case, the petitioner had overstayed for a period of nine months approximately after expiry of leave period. The principle laid down by the Apex Court can be applied to the present facts of case for the reason the petitioner was not able to undertake journey to go to Shillong from remote place in Srikakulam District, on account of his serious ill health and that the respondents did not record that the petitioner intentionally overstayed after expiry of leave period. Therefore, prevention of the petitioner from reporting to duty after expiry of leave period is beyond his reasonable control. The nature of employment of the petitioner requires hard drill and working in a remote place in the borders of the country. When he was unable to move from bed, underwent treatment as inpatient, it is difficult

for him to attend his duties as personnel of Boarder Security Force. Therefore, overstay of the petitioner after expiry of the leave period cannot be said to be intentional, but it is due to the cause beyond his reasonable control and that he was prevented by sufficient cause. At best in **MUKUL KUMAR CHOUDHURI**, the Apex Court while dealing with similar circumstances, when an employee was continuously absent for 6 months, without prior sanction of any kind of leave, set-aside his removal, converted the same to imposing penalty to loss of pay for the period from the date of his removal till the date of reinstatement, exercising power under Article 226 of the Constitution of India. Even in the latter decision in **GIRIRAJ SHARMA**, the Apex Court opined that overstay for 12 days does not warrant harsh punishment. In **JANAKI RAMUDU**, the Division Bench of this Court was of the opinion that the punishment shall not be harsh, when employee is able to establish the cause for his absence.

58. The cumulative effect of the law declared by this Court and the various High Courts is that the penalty imposed against an employee for misconduct must commensurate with the gravity and the administrative authorities are expected to pass such orders in all fairness. Removal of an employee for overstay or absence is nothing but using a sledgehammer to crack a nut or using a lethal weapon against a parrot and it is nothing but crushing the future life of an employee both financially and mentally, since there is no possibility for him to secure any other employment in his near future. Therefore, the penalty imposed against the petitioner is harsh and it is totally unfair on the part of the respondents, since the discretion which vested on them was not properly exercised in recording any finding thereon.

59. By applying the principles laid down in the above judgments, the order under challenge passed by the respondents is liable to be set aside for the following reasons:

- a) The respondents did not record any reason to ignore the

report of Sri I. Radha Krishna, BSF personnel of 108 BW BSF, Shillong, who visited the Village of the petitioner and submitted his report stating that he was suffering from severe ill health and undergoing treatment for the period of nine Months.

b) The respondents did not record reason that the petitioner was not prevented by sufficient cause for his overstay after expiry of leave period. On the other hand in paragraph 5 of the counter admitted that the petitioner sent telegram on 08.06.2012 received by the second respondent on 11.06.2012 informing about his sickness and sought 15 days extension of leave; the petitioner was served with notice on 06.06.2012 directing him to join duty followed by another notice dated 12.06.2012 with similar direction, but the petitioner did not report duty and thereafter BSF enquiry was ordered on 29.07.2012 and submitted report by Sri I.Radha Krishna, 108 BW BSF, but based on the opinion of the Doctor of the Unit who opined that as a case of acute cholecystitis, such a prolonged stay away from duty does not justify; he may take treatment NEIGRIHMS, if required he may be referred to higher centre and declined to accept the cause shown by the petitioner and passed final order without recording any finding as to the sufficient cause.

c) Imposing penalty of removal from service is against the principles of natural justice as laid down in the Judgments of the Apex Court in **MUKUL KUMAR CHOUDHURI, GIRIRAJ SHARMA** and the judgment of this Court in **JANAKI RAMUDU**, so also the judgment of this Court in CH.PRABHAKAR RAO.

60. Therefore, the order under challenge is hereby set aside holding that the removal of the petitioner from service despite showing sufficient cause for his overstay after expiry of leave period is irrational and failed to record sufficient reasons in the order of removal for his overstay. However, the respondents are at liberty to initiate appropriate enquiry, if require and impose penalty keeping in view the law declared by the Apex Court, in case the petitioner is found guilty.

61. Accordingly, the writ petition is allowed. No costs.

62. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

03.06.2016

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[\[1\]](#) 2006 1 AD (SC) 308

[\[2\]](#) 2012 (1) ALD 57

[\[3\]](#) 2012 Law Suit (SC) 110

[\[4\]](#) AIR 1958 SC 398

[\[5\]](#) 1955 1 SCR 1104

[\[6\]](#) MANU/AP/0073/2016

[\[7\]](#) AIR 1959 SC 725

[\[8\]](#) 2015 (2) ALD 41

[\[9\]](#) JT 2003 (2) SC 295

[\[10\]](#) AIR 2010 SC 75

[\[11\]](#) 1997 (7) SCC 463

[\[12\]](#) (1997) 3 SCC 72

[\[13\]](#) 2007 (4) SCC 669

[\[14\]](#) (1991) 1 SCC 212

[\[15\]](#) (1994) 3 SCC page 755